

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

September 24, 2002

IN RE:

APPLICATION OF BIRCH TELECOM OF THE SOUTH,
INC. FOR AUTHORITY TO TRANSFER CONTROL
FROM BIRCH TELECOM, INC., DEBTOR-IN-
POSSESSION, TO THE SHAREHOLDERS OF BIRCH
TELECOM, INC.

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DOCKET NO.
02-00825

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Sara Kyle, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on August 19, 2002 for consideration of the *Application for Authority to Transfer Control* (the "*Application*") of Birch Telecom of the South, Inc. ("Birch South"), pursuant to the provisions of Tenn. Code Ann. § 65-4-113, for approval of a transfer of the authority to provide utility services currently held by Birch South.

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-113 requires a public utility to obtain Authority approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) provides as follows:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority,

to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the Authority shall consider an application for transfer of authority, in pertinent part, as follows:

(b) Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .

The Application

In its *Application*, which was filed on July 30, 2002, Birch South requests Authority approval of an indirect transfer of control of Birch South which will result from a proposed reorganization of its parent company, Birch Telecom, Inc., Debtor-in-Possession ("Birch Telecom") under Chapter 11 of the United States Bankruptcy Code. Pursuant to the reorganization plan, control of Birch Telecom will transfer from BTI Ventures, LLC ("BTI"), a wholly owned subsidiary of the investment firm Kohlberg, Kravis, Roberts & Co. ("KKR"), to a diffuse group of shareholders.¹

According to the *Application*, Birch South is a Delaware corporation whose principal business offices are located in Kansas City, Missouri. Birch South provides local exchange and interexchange telecommunications services in Tennessee pursuant to authority granted to it by Order dated July 20, 2000 in Docket No. 00-00341. Birch Telecom is a Delaware corporation whose principal business offices are located in Kansas City, Missouri. Birch Telecom owns several subsidiaries that offer telecommunications services in the Midwest and Southeastern United States. BTI currently holds a controlling interest in Birch Telecom through its ninety

¹ According to the *Application*, these shareholders consist of several investment banks, including LB 1 Group, Inc., Bear Stearns Corporate Lending, Inc., Bank of America, N.A., Banker's Trust Company, LT Holdco I, L.L.C., Fleet National Bank, IBM Credit Corporation, Morgan Stanley Dean Witter Investment, and Lehman Brothers.

percent (90%) share of that company. KKR is an investment firm that makes equity investments on behalf of itself and its investors, which include state and corporate pension funds, banks, insurance companies, and university endowments.

Public Interest Considerations

The *Application* states that the indirect transfer of control will have no adverse impact on service to any of Birch South's customers. Birch South does not anticipate any changes to its rates or quality of service, and Birch South does not intend to change its name. The *Application* further states that by eliminating Birch Telecom's current obligations under its outstanding notes, refinancing its senior credit facility and converting its outstanding preferred stock, the proposed transaction will improve Birch's financial condition and overall creditworthiness, thereby enhancing its ability to make the necessary expenditures to compete effectively in the telecommunications market.

Findings

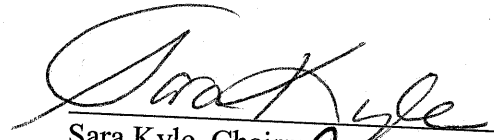
The voting panel considered this matter at the August 19, 2002 Authority Conference. Based upon careful consideration of the *Application* and of the entire record of this matter, the voting panel finds and concludes as follows:

1. The Authority has jurisdiction over the subject matter of this *Application* pursuant to Tenn. Code Ann. § 65-4-113;
2. Birch Telecom of the South, Inc. has been granted authority to provide telecommunications services in Tennessee;
3. Majority ownership of Birch Telecom of the South, Inc. will be relinquished by BTI Ventures, LLC resulting in a transfer to a group of owners, no one of which will have a majority ownership, of the authority granted Birch Telecom of the South, Inc. to provide utility services; and

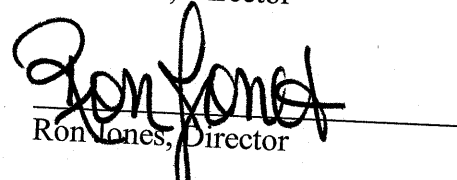
4. The transfer of authority will benefit the consuming public.

IT IS THEREFORE ORDERED THAT:

The *Application* of Birch Telecom of the South, Inc. for approval of the transfer of authority described herein is approved.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director